

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE

ANTHONY-DECARLO HAYES, SR.,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. 12-2253-JDT-tmp
	)	
A.C. WHARTON, et al.,	)	
	)	
Defendants.	)	

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ORDER ADOPTING REPORT AND RECOMMENDATION  
OF MAGISTRATE JUDGE FOR DISMISSAL  
AND  
ORDER CERTIFYING APPEAL NOT TAKEN IN GOOD FAITH

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On March 2, 2015, Magistrate Judge Tu M. Pham issued a report and recommendation [DE# 9] that the *pro se* complaint that was filed in this matter be dismissed for failure to state a claim upon which relief can be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), the court decline to exercise jurisdiction over the state law claims, and the state law claims be dismissed without prejudice.

Plaintiff has filed various objections to the report and recommendation and an affidavit in support thereof [DE#s 10, 11]. Plaintiff's objections are, for the most part, incomprehensible. For example, he states in his affidavit that he is "a live breathing Flesh and Blood Man with proof of life documents verified by the Curia Vaticano court of Chancery...." Affidavit, DE# 11, at para. 2. He also states that he is a "Non-Combatant" and "the Juvenile Justice system has revoked TNDL-57538597 that is connected to [his] real

person in essence to ingeniously create to incriminate” him. Id. at para. 5.

Plaintiff has attached a “Writ Per Curiam Divina” to his affidavit. In the Writ, he references “the Divine Spirit expressed in living trust,” “the illusionary world of Commerce and Usury,” and Abraham (of the Old Testament). Writ at p. 1. He contends that “[e]ach atom and cell of this physical vessel [he inhabits] to travel across this land is infused with the spark of the Creator.” Id. He is “one with the Sound, the Light, the Love, the alpha and the omega, without beginning nor end, without time.” Id. He further maintains that he is accountable under the “Laws of Great Britain and NOT under codes and statutes of the United Kingdom.” Writ at p. 6 (emphasis in original).

In the “Curia Vaticano,” which is also attached to Plaintiff’s Affidavit, he twice states that he “is a commercial vessel, an official carriage registered under the universal post office and authorized to transport the official post and sacred cargo beyond the sea.” Curia Vaticano at p. 1. He is “neutral in the public at peace with the Crown;” he “flies the International flag of peace;” and he “is under the protection of the Crown and the ‘One Holy’ all taxes and tithes prepaid.” Id.

Plaintiff’s objections are all conclusory, nonsensical, or incoherent. To the extent that the objections are comprehensible, they do not address the specific reasoning of the Magistrate Judge or the authorities on which the Magistrate Judge relies. Therefore, the objections are overruled. See Cowherd v. Million, 380 F.3d 909, 912 (6<sup>th</sup> Cir. 2004) (“Generally, the failure to file specific objections to a magistrate’s report constitutes a waiver of those objections.”); Miller v. Currie, 50 F.3d 373, 380 (6<sup>th</sup> Cir. 1995) (“[A] general

objection to a magistrate's report, which fails to specify the issues of contention, does not satisfy the requirement that an objection be filed. The objections must be clear enough to enable the district court to discern those issues that are dispositive and contentious.”).

Having carefully reviewed the record, the controlling case law, and Plaintiff's objections, the court agrees with the Magistrate Judge's recommendation. Because the Magistrate Judge thoroughly explained his decision and because an issuance of a more detailed written opinion would be unnecessarily duplicative and would not enhance this court's jurisprudence, the court ADOPTS the report and recommendation for the reasons set forth by Magistrate Judge Pham, and the case is hereby DISMISSED.

The court must also consider whether Plaintiff should be allowed to appeal this decision *in forma pauperis*, should he seek to do so. Pursuant to the Federal Rules of Appellate Procedure, a non-prisoner desiring to proceed on appeal *in forma pauperis* must obtain pauper status under Fed. R. App. P. 24(a). See Callihan v. Schneider, 178 F.3d 800, 803-04 (6th Cir. 1999). Rule 24(a)(3) provides that if a party was permitted to proceed *in forma pauperis* in the district court, he may also proceed on appeal *in forma pauperis* without further authorization unless the district court “certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis.” If the district court denies pauper status, the party may file a motion to proceed *in forma pauperis* in the Court of Appeals. Fed. R. App. P. 24(a)(4)-(5).

The good faith standard is an objective one. Coppedge v. United States, 369 U.S. 438, 445 (1962). The test for whether an appeal is taken in good faith is whether the litigant seeks

appellate review of any issue that is not frivolous. Id. It would be inconsistent for a district court to determine that a complaint should be dismissed prior to service on the defendants but has sufficient merit to support an appeal *in forma pauperis*. See Williams v. Kullman, 722 F.2d 1048, 1050 n.1 (2d Cir. 1983). The same considerations that lead the court to dismiss this case for failure to state a claim also compel the conclusion that an appeal would not be taken in good faith.

It is CERTIFIED, pursuant to Fed. R. App. P. 24(a), that any appeal in this matter by Plaintiff is not taken in good faith. Leave to proceed on appeal *in forma pauperis* is, therefore, DENIED. Accordingly, if Plaintiff files a notice of appeal, he must also pay the full appellate filing fee or file a motion to proceed *in forma pauperis* and supporting affidavit in the Sixth Circuit Court of Appeals within thirty (30) days.<sup>1</sup>

IT IS SO ORDERED.

s/ **James D. Todd**  
JAMES D. TODD  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Pursuant to Fed. R. App. P. 3(a), any notice of appeal should be filed in this court. A motion to appeal *in forma pauperis* then should be filed directly in the United States Court of Appeals for the Sixth Circuit. Unless he is specifically instructed to do so, Plaintiff should not send to this court copies of motions intended for filing in the Sixth Circuit.